IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 268 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIJAN MOHANDAS LAXMANDAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 268 of 2001

MR MTM HAKIM for Appellant

MR KC SHAH APP for Respondent No. 1

MR BD KARIA for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/12/2002

ORAL JUDGEMENT

This appeal has been filed by the present appellant - original complainant against the order passed by the learned Judicial Magistrate (FC) Dhrangadhra in Criminal Case No.1352 of 1996 dtd.31/1/2000 acquitting the accused under Sec.255(1) of Code of Criminal

Procedure for the offences punishable under Sections 447, 188, 506(2) 504 and 144 etc. of Indian Penal Code and further directed the complainant to pay Rs.500/- to the accused towards compensation within a period of 30 days from the date of said order and in default, the Magistrate awarded simple imprisonment for 30 days, which has been confirmed by the learned Additional Sessions Judge, Dhrangadhra vide judgement and order dtd.2/3/2001 dismissing Criminal Revision Application No.6 of 2000.

2. The appellant herein, had filed Criminal Misc.Application No.8144 of 2001 for leave to appeal in which this Court (Coram : A.L. Dave, J.) has passed the following order on 11/12/2001 ;-

> "Heard learned advocate Mr.Hakim. He clearly states that the applicant proposes to prefer the appeal to challenge the order of imposition of fine and imprisonment in event of default on the appellant - original complainant. The applicant does does not propose to challenge the judgement and order recording acquittal passed by the learned Magistrate.
>
> Hence, notice returnable on the 28th December, 2001. Learned APP Mr.Pancholi waives service on behalf of opponent No.1 - State."

3. Thereafter, this Court (Coram : C.K. Buch, J.) while disposing of the aforesaid Criminal Misc.Application, granted leave and admitted the appeal and passed the following order on dtd.21/3/2003 ;-

> "Heard ld. counsel Mr.Hakim and Mr.B.D. Karia, Ld. counsel appearing for the parties.
>
> Leave granted.
> Appeal admitted.
> The appeal be placed for final hearing on 1/4/2002. This application stands disposed of accordingly."

4. Thereafter, this matter has been placed before this Court for final hearing.

5. I have heard the learned counsel for the respective parties.

6. In view of the above, the only question which arises for consideration of this court is whether the order of the trial court is legal qua directions to the

complainant to pay cost of Rs.500/- by way of compensation to the accused and in default S.I. for 30 days, while acquitting the accused from the criminal case in question ?

7. It is the case of the appellant that the appellant filed Regular Civil Suit No.81 of 1986 in the competent civil court against the respondent No.2 inter-alia stating that the land in question is of the ownership of the appellant - original plaintiff and the said land has been granted by the Government to him through Town Development Officer ("T.D.O." for short) and he has been put under possession by the competent authority and panchnama to that effect has also been drawn. The appellant - original plaintiff had filed the said suit for permanent injunction restraining the respondent No.2 from interfering with his possession. In the said suit, the appellant - original plaintiff had also filed an application at Ex.5 for temporary injunction praying identical reliefs to the main prayers of the suit. In the said application at Ex.5, initially, the competent civil court ordered to maintain status-quo and after hearing the parties concerned, the competent civil court confirmed the interim injunction order on 5/11/1996, against which the respondent No.2 - original defendant preferred Civil Misc.Appeal No.37 of 1998 before the District Court, Dhrangadhra, which was assigned to the then Joint District Judge, Dhrangadhra, who after hearing the parties concerned and considering the evidence on record, dismissed the said appeal on 28/9/2001. Thus, interim injunction has been granted and confirmed by the competent civil court in favour of the appellant plaintiff and the suit is pending before the competent civil court for the land in question. However, in the meantime, the appellant herein filed a criminal complaint directly in court of learned Judicial Magistrate (FC), Dhrangadhra against the respondent No.1 under secs.447, 188, 506(2), 504 and 114 etc. of Indian Penal Code which was registered as Criminal Case No.1352 of 1996. The learned Judicial Magistrate (FC), Dhrangadhra after considering the evidence on record acquitted the accused under sec.255(i) of the Code of Criminal Procedure and directed appellant - original complainant to pay Rs.500/- towards compensation to the accused and in default, S.I. for 30 days. Against the said judgement and order, the appellant preferred Criminal Revision Application NO.6 of 2000 which was assigned to the then learned Additional Sessions Judge, Dhrangadhra, who after hearing both the sides, dismissed the said Revision Application vide order dtd.21/3/2001 against which the present appeal is filed.

8. Having heard the learned counsel for the respective parties and considering the evidence on record, it is pertinent to note that the civil suit between the parties is pending before the civil court and interim injunction order is granted and confirmed by the civil court in favour of the appellant and during the pendency of the suit, the criminal case in question was filed by the appellant instead of filing appropriate proceedings before the civil court. It also emerges from the record that Mr.V.H.Bhatt, was the advocate of the appellant in the civil suit as well as in criminal complaint in question and unfortunately, he himself was Assistant Public Prosecutor in the Criminal Revision Application No.6 of 2000 filed by the appellant before the District Court, Dhrangadhra against the judgement and order passed by the Chief Judicial Magistrate, Dhrangadhra in Criminal Case NO.1352 of 1996 in which he himself was appeared as advocate for the appellant. Mr.V.H. Bhatt was very much aware about the fact of the case from the very beginning, as he himself had drafted the suit, he himself appeared in the Criminal Case in question as advocate for the complainant appellant herein and obtained the interim injunction order and unfortunately, he contested Criminal Revision Application. Thus, whatever the lacuna is there, it is because of Mr.VH Bhatt who appeared as advocate of the appellant in the suit as well as in the criminal case in question and has also contested the Criminal Revision Application NO.6 of 2000 as Assistant Public Prosecutor but he inspite of being aware of the facts of entire case, he has not discharged his duty properly and has not assisted the district court properly as a result of which the court acquitted the accused and punished the appellant - original complainant by imposing penalty by directing him to pay Rs.500/- to the accused by way of compensation, in default S.I. for 30 days. In my opinion, there is no negligence or malafide intention on the part of the appellant original complainant. Considering the totality of the case, the order of the learned Judicial Magistrate (FC), Dhrangadhra passed in Criminal Case No.1352 of 1996 dtd.31/1/2000 qua directions against the appellant-original complainant to pay Rs.500/- by way of compensation to the accused, in default S.I. for 30 days, which has been confirmed by the learned Additional Sessions Judge, Dhrangadhra in Criminal Revision Application No.6 of 2000 vide order dtd.21/3/2001, only is hereby quashed and set aside. Rest of the order of acquittal will remain as it is.

9. In view of the above, this appeal is partly

allowed.

(R.P.DHOLAKIA,J.)
RAFIK